

111TH CONGRESS  
2D SESSION

# H. R. 5330

To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act for a 5-year period ending June 22, 2015, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2010

Mr. JOHNSON of Georgia (for himself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act for a 5-year period ending June 22, 2015, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. DELAY OF SUNSET.**

4       Section 211(a) of the Antitrust Criminal Penalty En-  
5       hancement and Reform Act of 2004 (Public Law 108–  
6       237; 15 U.S.C. 1 note) is amended—

7               (1) in subsection (a)—

1 (A) by inserting “of this subtitle” after  
2 “214”, and

3 (B) by striking “6 years” and inserting  
4 “11 years”, and

5 (2) by amending subsection (b) to read as fol-  
6 lows:

7 “(b) EXCEPTIONS.—With respect to—

8 “(1) a person who receives a marker on or be-  
9 fore the date on which the provisions of section 211  
10 through 214 of this subtitle shall cease to have ef-  
11 fect that later results in the execution of an anti-  
12 trust leniency agreement, or

13 “(2) an applicant who has entered into an anti-  
14 trust leniency agreement on or before the date on  
15 which the provisions of sections 211 through 214 of  
16 this subtitle shall cease to have effect,

17 the provisions of sections 211 through 214 of this subtitle  
18 shall continue in effect.”.

19 **SEC. 2. DEFINITIONS.**

20 Section 212 of the Antitrust Criminal Penalty En-  
21 hancement and Reform Act of 2004 (Public Law 108–  
22 237; 15 U.S.C. 1 note) is amended—

23 (1) by redesignating paragraph (6) as para-  
24 graph (7), and

1           (2) by inserting after paragraph (5) the fol-  
2       lowing:

3           “(6) **MARKER.**—The term ‘marker’ means an  
4       assurance given by the Antitrust Division to a can-  
5       didate for corporate leniency that no other company  
6       will be considered for leniency, for some finite period  
7       of time, while the candidate is given an opportunity  
8       to perfect its leniency application.”.

9       **SEC. 3. TIMELINESS; COOPERATION AFTER TERMINATION**  
10           **OF STAY OR PROTECTIVE ORDER.**

11       (a) **TIMELINESS.**—Section 213(c) of the Antitrust  
12       Criminal Penalty Enhancement and Reform Act of 2004  
13       (Public Law 108–237; 15 U.S.C. 1 note) is amended to  
14       read as follows:

15       “(c) **TIMELINESS.**—The court shall consider, in mak-  
16       ing the determination concerning satisfactory cooperation  
17       described in subsection (b), the timeliness of the appli-  
18       cant’s or cooperating individual’s cooperation with the  
19       claimant.”.

20       (b) **COOPERATION AFTER TERMINATION OF STAY OR**  
21       **PROTECTIVE ORDER.**—Section 213 of the Antitrust  
22       Criminal Penalty Enhancement and Reform Act of 2004  
23       (Public Law 108–237; 15 U.S.C. 1 note) is amended by  
24       adding at the end the following—

1           (1) by redesignating subsection (d) as sub-  
2           section (e), and

3           (2) by inserting after subsection (c) the fol-  
4           lowing:

5           “(d) COOPERATION AFTER EXPIRATION OF STAY OR  
6           PROTECTIVE ORDER.—If the Antitrust Division does ob-  
7           tain a stay or protective order in a civil action based on  
8           conduct covered by an antitrust leniency agreement, once  
9           the stay or protective order, or a portion thereof, expires  
10          or is terminated, the antitrust leniency applicant and co-  
11          operating individuals shall provide without unreasonable  
12          delay any cooperation described in paragraphs (1) and (2)  
13          of subsection (b) that was prohibited by the expired or  
14          terminated stay or protective order, or the expired or ter-  
15          minated portion thereof, in order for the cooperation to  
16          be deemed satisfactory under such paragraphs.”.

17       **SEC. 4. TECHNICAL CORRECTIONS.**

18          Section 214 of the Antitrust Criminal Penalty En-  
19          hancement and Reform Act of 2004 (Public Law 108–  
20          237; 15 U.S.C. 1 note) is amended—

21               (1) in paragraph (1) by inserting “of this sub-  
22               title” after “213(b)”, and

23               (2) in paragraph (3)—

24                       (A) by inserting “of this subtitle” after  
25                       “213(a)” the 1st place it appears, and

1 (B) by striking “title” and inserting “sub-  
2 title”.

3 **SEC. 5. GAO REPORT.**

4 Not later than 1 year after the date of enactment  
5 of this Act, the Comptroller General shall submit, to the  
6 Committee on the Judiciary of the House of Representa-  
7 tives and the Committee on the Judiciary of the Senate,  
8 a report on the effectiveness of the Antitrust Criminal  
9 Penalty Enhancement and Reform Act of 2004, both in  
10 criminal investigation and enforcement by the Department  
11 of Justice, and in private civil actions. Such report should  
12 include study of, inter alia—

13 (1) the appropriateness of the addition of qui  
14 tam proceedings to the antitrust leniency program;  
15 and

16 (2) the appropriateness of creating anti-retalia-  
17 tory protection for employees who report illegal anti-  
18 competitive conduct.

19 **SEC. 6. EFFECTIVE DATE OF AMENDMENT.**

20 The amendment made by section 2 shall take effect  
21 immediately before June 22, 2010.

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